



TOWN OF GREENWICH

Town Hall, 101 Field Point Road, Greenwich CT 06830

Board of Ethics

Fred Camillo 1st Selectman, Ex Officio Member
Paul A. deBary, Chairman
Robert V. Sisca, Member
Robert F. Grele, Secretary
John Margenot, Member

Annual Report of the Board of Ethics

Fiscal Year 2019-2020

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2020. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting by Section 2.12 (c) of the Greenwich Code of Ethics.

Executive Summary

During the 2019-2020 Fiscal Year, the Board of Ethics did not receive any complaints concerning violations of the Code of Ethics and received only one request for an advisory opinion. A copy of the Advisory Opinion rendered in response to this request is attached as Exhibit A.

The Town's current ethics reporting system is the cornerstone of its effort to instill public confidence in its ability to conduct its affairs in an ethical manner. But the COVID 19 Corona virus threat has exposed the fragility of this system, which has not changed for over half a century. For the 2019-2020 Fiscal Year, only three Town Officers filed forms to disclose financial interests in a Town transaction and one indicated that he was not able to have the form notarized. The sharp drop in filings during the recent emergency shows that an on-line filing system, which the Board has been recommending for many years, can provide greater reliability as well as improved ease of use.

The Board has approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line ethics reporting system. This draft has been reviewed by the Town Attorney and was under active consideration by the Board of Selectmen prior to the 2019 election, which resulted in a complete change in its membership. The current environment has made the limitations of the existing system self-evident. The Board encourages the new members of the Board of Selectmen to give serious consideration to this proposal and to recommend it to the RTM for approval at this opportune time.

The Board has benefited from the continuation of budgeted funds to support its operations. A significant portion of this budgetary allowance is intended to cover costs that might be necessary in connection with the preliminary investigation of a complaint, should the need arise. Although the Board has never yet required the use of such funds, the existence of this budget allocation serves as an important indication that the work of the Board will be supported as necessary. We believe that an increase in this budget allocation would provide further evidence to Town Officers and the public at large that the Board has the necessary means at its disposal to properly address any serious complaint it might receive.

Complaints of Violations of the Code

No complaints were filed with Board of Ethics during the 2019-2020 Fiscal Year.

The Board's Statement of Procedures describes the process by which complaints should be submitted to the Board. It was revised in 2019 and includes a new complaint form with more detailed instructions than the form used previously. Individuals filing complaints are often unclear about, or inadvertently omit, facts that are essential to be considered in order for the Board to determine whether a preliminary investigation of the matter should be commenced. Because of this, the instructions recommend that complainants identify themselves so that the Board can obtain any additional information that may be necessary.

The Board has adopted its new Statement of Procedures to help improve public understanding of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the absence of complaints is indicative of a high level of ethical behavior in Town government.

Requests for Advisory Opinions

The Board of Ethics received one advisory opinion request during the 2019-2020 Fiscal Year. This request was made by member of the Architectural Review Board. It asked for guidance in responding to a proposal to provide services to the Town. The Opinion provided guidance about the conditions under which a Town Officer's involvement in responding to a request for proposals and providing the services requested would be consistent with the Code of Ethics and those under which it would not. A copy of this opinion is attached as Exhibit A.

As indicated in the opinion, the Board feels that it would be advantageous for the Town's various commissions, committees and boards to be able to establish safe harbor procedures for participation in Town transactions. These could give Town Officers greater certainty that they could engage in Town transactions in a manner consistent with the Code of Ethics. The Board has initiated discussions with the Department of Administrative Services toward establishing a general template for such procedures that could then be adapted to the particular circumstances of the entity involved.

As in prior years, members of the Board individually and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

Annual Disclosure Statements

Review of Filings. As of July 30, 2020, three Town Officers filed seven annual disclosure reports with the Town Clerk covering the 2019-2020 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees	Appointees	Total
Fully Compliant	1	0	1	2
Not Compliant	<u>2</u>	<u>0</u>	<u>3</u>	<u>5</u>
Total	3	0	4	7*

* 3 individuals reported, two of whom filed multiple reports. The appointed official unnecessarily filed 3 reports for family members in the mistaken belief that it was necessary.

Two reports were filed by an RTM member that were not notarized due to the closure of Town Hall and most banking offices. In addition, three reports were filed unnecessarily since they were based on a misconception that each member of a Town Officer's family was required to report the interest reported by the Town Officer. This was based on a misunderstanding that arose during a teleconference discussion with the Board about the requirement for Town Officers to file statements when family members have an interest in a Town transaction. The individual understood this to require family members who are not Town Officers to report. The Board has since advised this individual that family members who are not Town Officers do not need to file reports and that the only interests of family members that a Town Officer is required to report are those that are separate from the interests that the Town Officer is otherwise required to report.

There was a significant decrease in the number of Town Officers filing reports during the 2019-2020 Fiscal Year. This was presumably due to the difficulties associated with filing during the current pandemic. Although only two of the seven forms filed were fully compliant with the Code, the substance of the reporting by all three filers was ultimately deemed appropriate.

The Board has questioned for several years whether a more user-friendly reporting system might result in improved reporting. It is likely that the current system seems unduly burdensome to many Town Officers, particularly if they are accustomed to using on-line systems to file other reports or engage in related activities. In addition to the requirement that disclosure statements be notarized, reports are currently only permitted to be filed at the end of the year —up to thirteen months after the transaction being

reported on may have occurred.¹ These requirements may serve as significant disincentives for reporting, especially when the individual may not have convenient access to a notary or the information needed to complete the form may not be readily available at the time he or she is required to make the filing. When the interest being reported (or the likelihood that nondisclosure will be noticed) seems small, some may consider that they will be better off not filing a statement rather than take the risk that they will be held responsible for making an inaccurate statement under oath. As a result, the Board is concerned that the overall low level of filings is an indication that the Town's ethics reporting system is not serving its intended purpose.

Plans and Recommendations

Plans. The Board will continue to serve as a resource for information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board stand ready to assist in training Town Officers. The Board prefers to help Town Officers gain a better understanding the Code by means other than adjudicating complaints. We are anxious to have all Town Officers, as well as the general public, fully understand the who, what, why, when and where of the disclosure process, as well as the other ways in which the provisions of the Code affect them. Toward that end, we will continue to send reminders, prepare reports and maintain current information about the Code and the operations of the Board of Ethics on the Town website during the 2020-2021 Fiscal Year.

The Board also expects to respond expeditiously to requests for advisory opinions. Typically, the issues raised in a request by one Town Officer are faced by others, so the opinions can also provide useful guidance for other individuals.

If and when technical amendments are made to the Code of Ethics to provide for an on-line disclosure reporting system, the Board will also stand ready to begin the process of implementing such a system.

Recommendations. Following a review of its activities and experiences in the 2019-2020 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Adopt Technical Amendments to the Code of Ethics to Modernize the Town's Financial Disclosure Reporting System. As discussed above, the Board believes that that requiring disclosure of financial interest is an essential aspect of the Town's ethics policy, but that the current system is outdated and difficult to comply with. The Board believes that adoption of an on-line disclosure system that does not involve notarized statements and permits reports to be filed contemporaneously throughout the year will significantly improve the Town's ethical profile and result in greater compliance with the Code of Ethics. However, a change from an annual paper-based reporting system to a contemporaneous on-line reporting system or decision to drop the requirement that statements must be

¹ Town Officers are required to keep track of all financial interests that they may have in Town transactions throughout the fiscal year in order to report on them after the close of the fiscal year, which can require record keeping and reporting on transactions that are over a year old at the time the filing is made.

filed under oath, would require a technical amendment to the Code of Ethics. The Board's recommended draft of such technical amendments has reviewed by the Town Attorney and has been under consideration by the Selectmen. We would be happy to further assist the Selectmen and the RTM with the process of implementing these amendments.

2. Establish Safe Harbor Procedures. The Town's purchasing procedures currently require that Town Officers submitting bids to the Town include an advisory opinion from the Board of Ethics with their bid. Although this has been helpful for many Town Officers, the Board is concerned that, as a compliance effort, this can be too little or too late. The process of identifying needs and preparing requests for proposals often begins far earlier than the point at which bids are solicited. Since the Code of Ethics embodies requirements that are intended to avoid even the appearance of a conflict of interest, Town Officers who become involved the process early on may unwittingly become ineligible to participate in the procurement. Therefore, it can be useful if Town Officers are reminded of the requirements of the Code earlier in the process. There are also often many opportunities for violations of the Code to occur subsequent to the submission of a bid. As a result, it would be beneficial for the various entities involved in reviewing or implementing Town actions and transactions to have procedures that assist in early identification and continuous monitoring of ethical vulnerabilities. The Board anticipates working with the Department of Administrative Services to create safe harbor procedures that would assist Town entities in identifying and monitoring potential issues before the opportunity for a violation of the Code to exist. Replacing the requirement that an opinion needs to be rendered prior to submitting a bid, with a requirement that the bidder certify compliance with safe-harbor requirements approved by the Board of Ethics for the department or entity involved, should result in a safer, more predictable process for all involved.

3. Fill the Vacancy in the Board's Membership. Due to the unexpected resignation of Pastor Bloom due to other work commitments, there is currently a vacancy on the Board. The Board is committed to responding to complaints and requests for advisory opinions and providing other assistance to the Town on a timely basis. Three members of the Board are required to have a quorum, however, and having only four members increases the likelihood that the necessary quorum cannot be organized in a time sensitive situation. We understand that consideration of the appointment of Rev. Stephanie Johnson has been delayed due to the logistical difficulties associated with the current pandemic, but would appreciate having the vacancy filled as soon as possible. We are also aware that Jennifer Paul Cohen has indicated an interest in serving on the Board. She would appear to be well qualified as an attorney who also has significant expertise in the field of medical ethics.

4. Increase the Board's Budget for Investigative Expenses. The Code of Ethics requires the Board to investigate any complaint it receives, but until recently there were no funds budgeted to cover any expenses that might be incurred in conducting such investigations. Under the Board's procedures, and as

provided by state law, the Board is required to conduct its preliminary investigation (to determine whether there are grounds for a further investigation) on a confidential basis. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of reducing the quality of the investigation by spending less, or compromising the confidentiality of the investigation by requesting additional funds. The Board is pleased to have received an allocation of funds for 2019-2020. These funds proved to be unnecessary and were not be used. However, the amount allocated (\$15,000) was less than the amount that the Board considers advisable to ensure that it will be able conduct a proper preliminary investigation should the need arise. Therefore, it requests a larger set-a-side of funds for this purpose in the coming fiscal year.

5. **Continue Training Efforts.** Training is a vital component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the requirements of the Code of Ethics and the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to provide training for elected and appointed Town officers with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements. Members of the Board are available to meet with groups of elected and appointed officials who would like to receive additional information concerning the annual disclosure requirement or provide whatever other assistance may be appropriate.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

September 30, 2020

Exhibit A

Advisory Opinion No. 20-01

Date: 5/12/20

Topics: Exerting Influence, Indirect Interest, Subcontractors, Substantial Interest, Voting on Actions or Transactions

Code Sections: Sections 2, 4 and 5

Statement of Facts:

A member of the Architectural Review Committee is a professional landscape architect. The Committee member also serves as the managing partner and majority owner of a landscape design firm and requested an advisory opinion prior to submitting a bid on behalf of the firm to provide landscape design services to the Town. The request for the opinion was made as a result of Section 1.10 of the Town's purchasing ordinance, which requires Town Officers to seek an advisory opinion from the Board of Ethics whenever a business in which the Town Officer has a financial interest is involved in a procurement.

The Town's request for proposals calls for the contractor to develop a master plan for a Town park. The bid submitted provides for the Committee member's firm to serve as the primary consultant leading a team that will include members and employees of that firm and several subcontractors. It is estimated that the total cost of the services will be under \$100,000. One of the subcontractors is also a member of the Architectural Review Committee. However, it was expected that the involvement of this other member will be "supplemental and supportive in nature" and the fees associated with the role "would likely be minimal."

The role of the Architectural Review Committee is advisory, but encompasses many aspects of the Town's land use regulations. Its primary role is to assist the Town in preserving the Town's natural landscape and the harmony of newly created landscapes and structures with the Town's natural landscape, terrain, existing structures and streetscapes. The Committee is also responsible to assist the Town in protecting neighboring owners and property users by making sure that reasonable provision has been made in plans approved by the Town for such matters as sight and sound buffers, control of trespass lighting, the preservation of views, light and air, and those aspects of design not adequately covered by specific regulations. The Committee may also be asked to assist the Town in determining whether relevant land use standards have been complied with in connection with its review of projects under construction or completed projects awaiting certification.

Under Section 99 of the Town Charter, any “major” redesign of public property or project that involves relocation of a street or changes to the extent or location of transportation routes is required to be approved by the Planning and Zoning Commission. The Director of the Department of Planning and Zoning has advised the Board that, if the master plan developed under the anticipated contract were considered to involve a major redesign of Roger Sherman Baldwin Park, it is likely that the Planning and Zoning Commission would request review by the Architectural Review Committee. The Committee Member has advised the Board that; in the event of any such review of a master plan prepared by the member’s team, the members of the team would refrain from any discussion of the matter with members or staff of the Committee and from participating in discussions of the Committee and votes on the matter.

Although the request for an advisory opinion was made significantly in advance of the scheduled date for submission of bids, the closure of Town facilities and restrictions on meetings due to current pandemic have limited the opportunities for the Board to discuss the matter with the Committee member or render an opinion prior to the due date for submitting the bid. The Board normally recommends that persons involved in bidding on Town contracts who are members of Town boards, commissions and committees formally notify the head of the body and the director of the Town Department involved in the procurement in advance of submission of the bid. In this case the Board was unable to consider the request in time for this to be done in advance.

In the request for the advisory opinion, however, the Committee member stated: “I would like to clarify that I have had no involvement in the preparation of this RFP or any prior knowledge, involvement or activity with the town or anyone regarding this project in my capacity as a volunteer on the Architectural Review Committee or in any other way at this point. I do feel that I can participate fairly and without bias or unfair advantage of any sort.” The Committee member has also confirmed to the Board that no member or employee of the firm or any subcontractor has had any contact with the individuals who established the specifications for the contract or with any member of the selection committee that will recommend award of the contract.

The normal process of submitting a proposal to the Town necessarily involves some degree of contact with the employees of the Purchasing and Administrative Services Department. In response to further inquiry from the Board, the member indicated that: “Once the RFP was issued, I contacted the town through the prescribed method in the RFP process to ask a few questions. My first question was directed to [a member of the Purchasing Department], to ask about whether or not my involvement in ARC would preclude my firm from issuing a bid for this work. She did not initially know the answer to that question, so I reached out to the [Superintendent of Parks]. That inquiry resulted in my sending [the Board of Ethics] a formal request for this advisory opinion. Subsequent to that, I phoned the number listed on the RFP for two other questions to seek clarification in order to prepare our bid accurately. In this regard, I spoke to [another member of the Purchasing Department], who answered my brief questions. One question related to whether the respondents to the RFP were expected to include concept drawings in their proposal. The other was about whether a respondent could submit as a co-equal partnered team, or if it needed to be a single prime design contractor.” The Board has considered these contacts and considers that personal contact

with the employees of the Purchasing and Administrative Services Department handling the bidding has been limited only to questions and responses regarding procedure. In that process and in the bid itself, no mention was made of the position of any member of the team as a Town Officer, except in relation to the need to obtain an advisory opinion.

Questions Presented:

1. For purposes of Section 4 of the Code of Ethics, does a Town Officer have a “substantial financial interest” in a Town transaction as a subcontractor for a professional services contract when the subcontractor’s role is expected only to be supplemental and supportive in nature and the fees associated with the role likely be minimal?
2. Is the submission of a bid for a Town contract a “transaction” under Section 3 (4) of the Code of Ethics?
3. Does the Code of Ethics prohibit an individual from providing professional services to the Town?
4. How can a Town Officer avoid exerting influence over an action or transaction that the Town officer has a substantial financial interest in, particularly where persons who are involved with the individual’s work as a Town Officer may act in a supervisory or evaluation capacity with respect to such professional services?

Discussion and Conclusion:

The Code of Ethics only authorizes the Board of Ethics to give advisory opinions to Town Officers. However, it permits any Town Officer to request an advisory opinion with respect to any matter involving the interpretation of the Code. During the 1970’s, a number of the members of the Board were individuals who had served as members of the 1st Selectman’s’ Special Committee that drafted the Code of Ethics. It is noteworthy therefore, that three of the first four advisory opinions rendered by the Board involved questions raised by Town Officers about the activities of other Town Officers. (A71-01, A72-01, A78-01)

Since the Committee member requesting this advisory opinion indicated that another member of the Committee would be serving as a subcontractor in connection with the proposal, the Board will address the issue of the subcontractor’s interest in the proposal, since it believes that the remaining issues apply equally to the subcontractor.

The Subcontractor’s Interest

An indirect interest is defined in Section 1 of the Code as including “the interest of any subcontractor in any prime contract with the Town.” In this case, the role of the subcontracting fellow Committee member has been described as “supplemental and supportive in nature” and the associated fees likely to be “minimal.” However, Section 1 further defines “substantial financial interest” as “any financial interest, direct or indirect,

which is more than nominal.” The Board has always considered this to indicate that Town Officers should take a strict view of what is considered a “substantial financial interest.”

The Board has, for example, considered part time compensation of \$300 a year for services as an instructor in a Town sports clinic to be a substantial financial interest (A09-02). It has also suggested that a coffee table book has value, even if was undeterminable (A02-10). Consequently, the Board believes that the sub-contractor should be considered to have a substantial financial interest in the procurement and in any resulting transaction until the facts clearly prove otherwise.

Submission of the Bid as a Town Transaction

Section 1 of the Code also defines “transaction” in pertinent part as follows:

“Transaction shall mean and include the *offer*, sale or furnishing of any real or personal property, material, supplies or *services* by any person, directly or indirectly, as vendor, *prime contractor*, *subcontractor* or otherwise, for the use and benefit of the Town *for a valuable consideration...*” (*Emphasis added*)

Consequently, the Board has always considered a proposed transaction with the Town as a transaction in which a Town Officer could have a substantial financial interest, even if an award has not been made. This makes Sections 3, 4 and 5 of the Code applicable to bid submissions as well as actual contracts awarded.

Permissible Role of Town Officers in Transactions

The Board of Ethics has consistently cautioned Town Officers against creating the appearance of impropriety, while approving the participation of Town Officers in transactions with the Town as long as appropriate steps were taken to avoid that appearance. For example, in 1983, the Board cautioned against communications with members of the Purchasing Department, indicating “...it is difficult to know what communications may influence a decision. Therefore, the Board advises Town Officers to avoid discussions with those in Town government involved in the purchasing decision with respect to any product or service that the company employing the Town Officer may be seeking to provide the Town.” (A83-02).

More recently, a member of the Commission on Aging requested an advisory opinion from the Board of Ethics prior to submitting a bid to the Town for services related to outpatients at Nathaniel Witherell, the Town’s rehabilitation and convalescent facility. In that opinion (A17-01), the Board summarized the best practices it recommends to Town boards, commissions, committees and agencies concerning transactions between the Town and their appointed members, including written procedures and disclosures to all appropriate persons. In view of the steps taken by the Commission member in that case to avoid the appearance of a conflict of interest, including requesting an opinion from the Board in advance of submitting the bid, the

Board indicated that it was not necessary for the member to resign from the Commission on Aging prior to submitting the proposal for services.

In that case, the Board summarized prior cases in which it has found consistently that it is not the *existence of a financial interest* that the Code prohibits, rather it is the *exercise of influence* with respect to that interest that the Code prohibits:

“The Board has previously indicated that Town Officers do not need to resign their positions in order to engage in Town transactions as long as appropriate steps are taken to ensure that Town actions and transactions are not influenced by the Town Officer and the Town Officer does not participate in any votes concerning the actions or transactions. See Advisory Opinion 90-01 (member of Tax Review Committee of RTM employed by Housing Authority), Advisory Opinion 98-02 (RTM member serving on Board of local non-profit), Advisory Opinion 01-02, (member of the Inlands, Wetlands and Watercourses Agency involved with non-profit applying for an approval), Advisory Opinion 02-05 (employee of custom home builder serving on Planning and Zoning Commission). These opinions indicate that the existence of the interest need not require the Town Officer to resign in order to participate in a transaction with the Town. But they also confirm that appropriate procedures should be followed to insulate the Town Officer from the opportunity to influence the transaction.”

Similarly, in this case, neither the existence of a Town Officer as an owner of the prime contractor making a proposal to the Town, nor the involvement of another Town Officer in the team assembled by the contractor, necessarily results in a violation of the Code of Ethics. Rather, the Code only concerns itself with the exercise of influence in connection with the award and performance of the contract.

As volunteers working for Town boards, commissions and committees, many individuals gain a high degree of familiarity with, and understanding of, the Town’s activities, objectives, procedures and requirements. This may give them an advantage when bidding on Town contracts, but it should not be considered an unfair advantage. Indeed, it is an advantage similar to that enjoyed by any existing Town contractor and it would be manifestly unfair, and inimical to the interests of the Town, to make it into a disadvantage. The Code of Ethics does not forbid Town Officers from engaging in transactions with the Town. It simply requires that they maintain an appropriate distance from the selection, supervision and performance evaluation processes and not use their position as Town Officers to influence these processes.

Avoiding the Appearance of Exerting Influence

In prior advisory opinions, the Board has encouraged each Town board, commission or committee to establish procedures relating to participation by its members in Town transactions based on the particular circumstances of their entity. However, it is logical for an entity to wait until the need arises to implement these policies, so that they

aren't formulated in a vacuum. Normally, we would expect such procedures to involve immediate notification of the head of any such board, commission or committee and the director of the Town department involved, but we understand that the Committee has not yet adopted such procedures.

The purpose of adopting such a procedure is to allow the two entities to take steps to avoid any inappropriate entanglements between the Town Officer and the town employees or other officials involved in a transaction. In this case, however, the Committee member has assured the Board of Ethics that there was no prior knowledge and that there has been no involvement between the Town Officers submitting the bid and the persons involved in preparing the specifications for the contract. This indicates that the result intended has been achieved thus far, even though a procedure hasn't been formally adopted. We assume that the Committee members will notify the Chair of the Committee and the Director of the Department of Planning and Zoning promptly, so that steps can be taken to ensure the integrity of the selection process and the administration of the contract if it is awarded to the Committee members' team.

A particular concern of the Board in these situations is that steps be taken to avoid unnecessary contact between persons involved in performing the contract and those supervising it. This is particularly important in the case where the persons involved in performing the contract might, in their position as a Town Officer, be in a supervisory role with respect to the persons who are at the same time responsible for supervising or evaluating them and their performance as contractors.

The Board is confident that, should the Committee member's firm be awarded the contract, appropriate steps will be taken to avoid inappropriate contacts and that if a situation arose where it was impossible to avoid the concurrence of inconsistent supervisory or evaluative roles, the Committee members would resign their positions rather than violate the Code or default on their contractual obligations.

Annual Disclosure

It is also incumbent on the Board to remind the Committee members that they will have an obligation to make reports under Section 5 of the Code should they receive an award of the contract.

See Related: A83-02, A90-0, A91-02, A01-02, A02-05, A02-10, A09-02